**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 6760 of 1989**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MODI KESHAVLAL GIRDHARLAL - Petitioner(s)**

**Versus**

**PABAJI TALSAJI BHIL & 1 - Respondent(s)**

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**Appearance :**
MR KB PUJARA for Petitioner(s) : 1,
MR PJ VYAS for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 04/10/2005**

**ORAL JUDGMENT**

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality

and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 3-3-1989 in Revision Application No.TEN.B.A.1481/84 as well as the judgment and order passed by the Gujarat Revenue Tribunal dated 21-7-1989 in Review Application No.TEN.C.A.10/89.

2. It appears from the record that the petitioner claims to be the tenant and submitted an application before the Mamlatdar & ALT, Deesa under Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the “Act”). The Mamlatdar & ALT, Deesa by his judgment and order dated 3-9-1984 held the petitioner to be the tenant of the land in question and fixed the purchase price. Thereafter, the said order of the Mamlatdar & ALT, Deesa was challenged by the respondents before the Deputy Collector, Palanpur by way of Tenancy Appeal No. 41 of 1984 and the Deputy Collector, Palanpur by his order dated 20th October, 1984 dismissed the said appeal and confirmed the order passed by the Mamlatdar & ALT, Deesa dated 3-9-1984.

3. Being aggrieved by and dissatisfied with the aforesaid orders, the respondents preferred Revision Application No.TEN.B.A.1481/84 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal without considering the matter on merits and only on the ground that the

petitioner has not submitted any application under Section 70(b) of the Act, allowed the said application relying upon the judgment of the Gujarat Revenue Tribunal reported in 20 G.R.T.L.R. Page 1.

4. Thereafter, the petitioner preferred review application being Review Application No.TEN.C.A.10/89 before Gujarat Revenue Tribunal and requested to remand the matter and/or to decide the said revision application on merits on other points, which also came to be dismissed by judgment and order dated 21-7-1989 passed by the Gujarat Revenue Tribunal.

5. Being aggrieved by and dissatisfied with the aforesaid two orders of the Gujarat Revenue Tribunal, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

6. Shri KB Pujara, learned advocate appearing on behalf of the petitioner has submitted that the Gujarat Revenue Tribunal, while allowing the revision application, has glared upon the judgment of the Gujarat Revenue Tribunal reported in 20 G.R.T.L.R. Page 1 and the very judgment is set aside subsequently by this court in the case of Kalabhai (since deceased) through his heirs Shantaben Kalabhai and Others v. Taraben widow of

Gordhan Mangalbhai and Others reported in 1991-32(1) GLR page 118, by which this court has taken a view that a separate application under Section 70(b) of the Act is not required and that the Mamlatdar and ALT, Deesa itself can decide and hold inquiry whether the petitioner is a tenant or not. Shri PJ Vyas, learned advocate appearing on behalf of the respondent no.1 does not dispute the above fact. In view of the fact that the Gujarat Revenue Tribunal has allowed the aforesaid revision application on that ground alone and has not considered the other points on merits, the matter is required to be remanded to the Gujarat Revenue Tribunal for deciding the same afresh in accordance with law and on merits on other points.

7. For the reasons as stated above, the petition succeeds. The judgment and order passed by the Gujarat Revenue Tribunal dated 3-3-1989 in Revision Application No.TEN.B.A.1481/84 and the judgment and order passed by the Gujarat Revenue Tribunal dated 21-7-1989 in Review Application No.TEN.C.A.10/89, are hereby quashed and set aside and the matter is remanded to the Gujarat Revenue Tribunal for deciding the same in accordance with law and on merits on other points and to consider the order passed by the Deputy Collector, Palanpur as

well as the Mamlatdar and ALT, Deesa on merits.

8. The Gujarat Revenue Tribunal is therefore, directed to decide and dispose of the aforesaid revision application on remand as early as possible, preferably within a period of six months from the date of receipt of this order, subject to cooperation by all the concerned parties. Rule is made absolute to the aforesaid extent. Ad interim relief if any, stands vacated forthwith. However, no order as to costs. Office is directed to send the writ immediately.

**(M.R.SHAH,J)**

Shekhar/-